IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4460 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PAHELUMEL NANDUMEL MALANI & 13 - Petitioner(s)

Versus

SETTLEMENT COMMISSIONER & COLLECTOR & 15 - Respondent(s)

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Appearance :

MR BHARAT T RAO for Petitioner(s) : 1 - 14.
Ms. Archana Raval, AGP for Respondent(s) : 1 - 2.
MR JITENDRA MALKAN for Respondent(s) : 3,
MR SK BUKHARI for Respondent(s) : 4 - 16.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/02/2006

ORAL JUDGMENT

This is a matter of 1992. From the record, it appears that the present Special Civil Application came up for Final Hearing on 30th September 2005. The

learned Single Judge of this Court [Coram: Mr. K.S. Jhaveri, J.] passed the following order;

> “This matter was on board for hearing on 5.9.2005 and the same was adjourned to today. Today even in the second Mr. Rao is not present. Therefore, as a last chance, matter to come up on board on 7th October 2005. The matter shall be listed on the top of the final hearing board. On the next date even if Mr. Rao remains absent, the Court will proceed with the matter.”

It appears that, even thereafter, on number of occasions, the matter came to be adjourned, and ultimately the same was on Board on 30th January 2006. On 30th January 2006, it was reported that there was a sick note of Shri BT Rao, learned advocate appearing for the petitioners and therefore the matter came to be adjourned to 1st February 2006 by observing that in the interests of justice, S.O. To 1st February 2006 and on that date irrespective of sick note or any leave note the matter will be proceeded and decided on merits. Today, when the matter is called out

twice, the learned advocate appearing on behalf of the petitioners is absent and therefore this Court has no other alternative but to decide and dispose of the Special Civil Application on merits, ex-parte.

2. It appears from the record that, the petitioners have challenged the legality and validity of the order passed by the Settlement Commissioner, dated 29th May 1992 bearing No. RHB/WASI/732 to 769/92 directing to resume the land and take possession of the property in question with superstructure from the members of the association.

3. It appears from the record that the petitioners claim to be Members of Lal Bahadur Shastri Shop Keepers Association situate at Varasia Road, Vadodara. It appears that one Shri Samandas G. Sharma posing himself as President of the Lal Bahadur Shastri Shopkeepers Association submitted an application to the Government of India requesting them to allot land from the Compensation Pool which was acquired by the Government under the provisions

of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It is the case on behalf of the petitioners that prior to that the Government of India has given land nearer to Varasia Colony on rental basis for carrying their business in the cabins as the petitioners are migrated from Pakistan. It is the case on behalf of the petitioners that their proposal came to be sanctioned by the Managing Officer, Bombay in the year 1970 and thereafter required payment has been made by the Association and they submitted the list of members in the year 1970. A Sale Deed was also executed by the Government with the Association in the year 1979 and thereafter they have constructed the shops as per the plan approved by the Baroda Municipal Corporation and were doing the business since 1990-1991. It appears that the respondent No.1 Settlement Commissioner appointed under the provisions of the aforesaid Act initiated proceedings for breach of condition of grant/allotment and a show cause notice came to be issued on 9.7.1991. It appears that a reply was submitted to the said show cause notice and

thereafter after considering the reply and giving opportunity to all the persons, the Settlement Commissioner, respondent No.1 passed the impugned order on 10th June 1992 resuming the land to the State Government along with the superstructure by holding that there are financial irregularities as well as breach committed by the occupiers and there is a breach of condition of allotment. On going through the impugned order, it appears that the impugned order is a well-reasoned order and a finding on appreciation of evidence has been given by the respondent No.1 by which the respondent No.1 has held that there are financial irregularities committed and that the benefit has not been given to true members and the real members are deprived of their legitimate rights. As per the finding given by the Settlement Commissioner and Collector, Vadodara in order dated 29.5.1992/10th June 1992 and on going through the same, it cannot be said that the impugned order is illegal, perverse or contrary to the evidence on record and/or arbitrary which require interference by this Court exercising power under Article 226/227 of

the Constitution of India.

4. For the reasons stated above, the Special Civil Application fails. Rule is discharged. Ad-interim relief stands vacated forthwith. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.